

# State of New Hampshire



**PERSONNEL APPEALS BOARD**  
54 Regional Drive, Unit 5  
Concord, New Hampshire 03301

## **STATE OF NEW HAMPSHIRE PERSONNEL APPEALS BOARD**

**MELISSA SIMMONS**

**V.**

**N.H. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**2018-T-013**

**APPEARANCES:** SEA Representative Sean Bolton represented the Appellant.

Attorney John Martin represented the State.

**WITNESSES:** Rhonda Henault Chasse' – Appellant's Supervisor/Director of Facilities at DCYF

Michael Simpson – Juvenile Probation and Parole Officer for DCYF

Corey Dearborn – Youth Counselor III and SEA Stewart at DCYF

**ISSUES OF LAW:** Per 1002.08 Dismissal

Policy Directive Sec 1051 – Professionalism and Ethics

Policy Directive Sec 1341 – Conditional Release Supervision

Policy Directive Sec 1410 – Assessment for Youth

Policy Directive Sec 1558 – Missing Child/Youth

Policy Directive Sec 1560 – Mental Health Screening

Policy Directive Sec 1551 – Developing the Case Plan and its Requirements

**APPEAL HEARING:** The Board conducted an in-person hearing on February 9 and 10, 2021 at the offices of the NH Banking Commission, in Concord, NH. It held a deliberative session on March 3, 2021

**APPEAL TRIBUNAL:** Commissioners Marilee Nihan, Gail Wilson and Norman Patenaude, Esq. constituted a quorum

### **BACKGROUND**

The State dismissed the appellant from its employment on March 9, 2018. She disagreed with that administrative action and requested a hearing.

### **FINDINGS OF FACT**

The N.H. Department of Health and Human Services – Division of Children, Youth and Families (“DCYF”) hired the appellant as a Juvenile Probation and Parole Officer (“JPPO”). The duties of that position include, but are not limited to, the preparation of written reports to the courts, the supervision of adjudicated delinquents and supervisees (“CHINS”), monitoring compliance with individual plans by parents/guardians, promptly reporting violation to the courts, the development of individual supervision plans, the completion of all required documentation and the power to arrest violators. The appellant began her career with DCYF as a fiscal specialist, then moved into a CHINS JPPO position that involved mostly residential visits and finally became a routine JPPO in 2016 that involved mostly field visits to homes, schools, and work sites. She was assigned to the southern district that includes Nahua and Merrimack, NH. The appellant was familiar with the policies on Professionalism and Ethics #1051, Conditional Release Supervision #1341, Risk Assessment for Youth #1410, Missing Youth/Child #1558, Mental Health Screening Tool # 1560, and Developing the Case Plan and its Requirements #1551.

On June 2, 2016 the appellant’s supervisor, Ms. Henault (now Chasse’), summarized in an email message some of the performance shortcomings that they had discussed a day earlier and that needed to be remedied before the appellant went on a medical leave of absence for the next two months. The list included the need to complete all required documentation on open cases, a change to the appellant’s daily work schedule from working mostly remotely from home to conducting in person the required site visits in the field, too little direct verbal communication with her supervisor, poor preparation of violation updates for the courts, and the implementation of that corrective action plan upon her return to work. Another email message ten days later documented the lack of required trauma screens on all the appellant’s cases. The State workday began at 8:00 am and ended at 4:00 pm but Supervisor Henault observed the appellant waiting for her daughter at the school bus stop at 3:30 pm on more than one occasion.

In early August 2017 Supervisor Henault cited the appellant for only completing three out of seven trauma screens and directed the appellant to complete the remaining screens by the end of that month. On August 9, 2017, Supervisor Henault directed the appellant to submit all court related motions and reviews to her before submitting them to the courts and assigned a fellow JPPO, Michael Simpson, to mentor the appellant for a few weeks to improve the appellant’s job performance. Supervisor Henault also directed the appellant to perform specific tasks in the case of “Sam”, age 17, who required a high

level of supervision both by his JPPO and the parent because he was classified as an adolescent sex offender. Supervisor Henault faulted the appellant for not conducting a timely mental health screening and safety assessment and for not notifying the court of the pregnancy of another juvenile, BM. Supervisor Henault characterized the appellant's overall case management practices as poor.

The 10-point mentoring and training plan that went into effect on September 13, 2017 called for the appellant to submit all courts reports to her supervisor eight days before the court due dates, to conduct all client visits and hearings with her mentor, to include her mentor at all dispositional hearings, to meet with her supervisor bimonthly, to attend the next scheduled Solution Based Casework ("SBC") training, to involve the mentor in all case management and client supervision planning, to present herself in a more professional manner, to refrain from engaging in negativity with colleagues, to attend all scheduled court proceedings, and to converse directly by voice mode with Supervisor Henault about her daily whereabouts. The appellant resisted the mentoring plan, bypassed required protocols, and ignored suggested changes to her way of managing her cases. She avoided the mentor and communicated infrequently with him often keeping him out of the loop for site visits. The appellant complained that the plan created stress for her and caused panic attacks. Supervisor Henault explained that the appellant received good performance evaluations as a CHINS JPPO but received some lower scores as a JPPO because she neglected to perform some of the required tasks.

In early October 17, 2017 Supervisor Henault followed up on the mentoring plan after the receipt of some feedback from the mentor, Michael Simpson. His report indicated that the appellant failed to timely notify him of some court hearings, failed to include him in client negotiations, school meetings and other meetings with newly adjudicated youths, and failed to otherwise comply with the mentoring plan. Of particular concern to Supervisor Henault was a case involving a teenage mother, BM, age 15, who went missing for a weekend with her infant. BM was located at a motel staying with an adult male, age 33, known to law enforcement for engaging in human trafficking. Supervisor Henault faulted the appellant for mishandling the case, for not notifying the court and for not taking other steps to rectify the situation. That juvenile client later went to a friend's home where other JPPO's located her and took her back to her own home. Supervisor Henault immediately took the appellant off the case because the appellant's failure to follow the protocols in the case placed the juvenile and the juvenile's infant at risk of harm by a predator.

On October 17, 2017, after more than a year of addressing concerns without demonstrable improvement, Supervisor Henault notified the appellant in writing that DCYF was launching an investigation into possible violations of its policy on Professionalism and Ethics for failure to perform her duties as recited in the supplemental job description ("SJD") and possibly placing another juvenile at risk by failing to properly devise a safety plan and allowing the juvenile, MW, to live elsewhere without timely documenting that change in the tracking system. Supervisor Henault sent two other JPPO's to the juvenile's home to check on her. These omissions raised serious questions about the appellant's judgment, insight, and fitness to serve the vulnerable populations the appellant worked with and to properly supervise them. No new cases were assigned to the appellant and that left her with only a dozen cases to work on.

On December 21, 2017 Supervisor Henault suspended the appellant from duty with pay and extended the suspension on January 8, 2018 under the authority of Per 1101.01 for alleged misconduct on the job.

As part of the investigation Supervisor Henault and others interviewed the appellant in the presence of her SEA representative on January 30, 2018. At that meeting the appellant acknowledged that she was familiar with the applicable policies and it became evident to Supervisor Henault and others that the appellant had violated several of the agency's policies. In particular, she noted that the appellant had not regularly assessed, monitored, or addressed the safety of several youths in her caseload. Supervisor Henault noted that the appellant assumed that the youths in question were safe and being supervised at home and that she failed to take proper action as their assigned JPPO. Supervisor Henault concluded that the appellants actions or lack of action exposed these youths and, in some cases, their own infants to risk of significant harm. Supervisor Henault also received complaints from some judges about the appellant's poor case management practices. The appellant failed to satisfactorily refute any of the allegations or to explain why she was not doing the case work when she was home most of the time according to her work calendar. Supervisor Henault explained that email messages, memoranda, the mentoring plan and meetings contained the same information as formal corrective action plans. Despite all the advice, Supervisor Henault concluded that the appellant failed to do her job which included making the interests of her clients' paramount.

On February 28, 2018 Supervisor Henault informed the appellant of a pending disciplinary termination and requested a meeting to discuss it on March 6, 2017. The notice included copies of the policies that the appellant violated and cited specific instances in which those policies were violated. The appellant did not specifically address any of the casework performance issues or her failure to address multiple safety concerns for the various youths who were assigned to her. She never addressed her failure to adhere to the policies, her failure to perform the duties enumerated in the SJD, or discuss the assumptions she made that certain youths were safe. The appellant took no ownership for her actions or inactions and did not talk about the performance shortcomings that were raised at the meeting.

On March 9, 2018 Supervisor Henault formally dismissed the appellant from state service for violating several DCYF policies under the authority of Per 1002.08 (b) (7) and for endangering the life, health or safety of individuals served by the agency under the authority of Per 1002.08 (b) (9). The Notice of Dismissal cited the policies that the appellant violated as well as over two dozen incidents that were considered unacceptable work. Supervisor Henault explained that she decided to dismiss the appellant in lieu of taking other progressive disciplinary measures because of the long pattern of the appellant's substandard work that placed agency clients at risk of harm.

The appellant liked her job and cared for the children in her supervision. She saw no need for the mentoring plan which she said placed too many restrictions on her. She disputed all the allegations of case mismanagement and stated that she would have addressed any problems over the years had they been called to her attention. She pointed to the prior good performance evaluations as a CHINS JPPO and to email messages between her and others including Supervisor Henault to place the incidents in question in another context but some of those evaluations included comments that alluded to some areas of concern even at that time. The appellant also disputed the allegations that she violated several of DCYF's policies. The record documents that meetings were held on July 17, 2017, August 8, 2017, September 12, 2017 and October 2, 2017 along with biweekly supervision reviews, and that there were countless electronic mail and text messages that raised concerns about the appellant's case management practices that were not in compliance with required protocols.

In its closing summary the State recited three points. The first issue related to the appellant's transition from the CHINS JPPO to the Nashua District Office JPPO position in early 2016. In the State's opinion, the appellant struggled with the change in approach as the JPPO position at the Nashua District Office required personal and visual contacts with clients and collateral sources. The State contended that the appellant took no ownership of any of the deficiencies and that she failed to meet the work standards of the JPPO position. The second point concerned issues with the appellant's caseload and her errors and omission. The State argued that her caseload was very manageable and that there was no justification for her shortcomings. The third point addressed the issues of the investigation and termination. The State argued that its investigation was thorough and replete with documented errors and omissions spanning a period to two years many of which placed children under her supervision at risk of harm. The State argued that the appellant failed to meet her burden of proof because it refuted her factual rendition of the events and it asked the Board to uphold the dismissal.

On the other hand, the appellant characterized any policy violations as less than egregious and opined that a letter of warning ("LOW") would have been more appropriate. She believed that the State failed her throughout the entire process and that the counseling that she received was mostly by electronic mail as the State never provided a corrective action plan ("CAP") or training. She dismissed the mentoring plan as useless and pointed to a clean disciplinary record before her dismissal. She lamented the lack of progressive discipline, argued that her dismissal was unwarranted and asked the Board to reinstate her to her former position.

#### **DECISION**

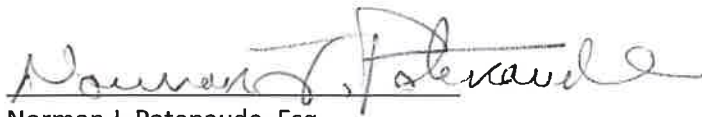
The Board concludes that the appellant failed to satisfy her burden of proof and to establish by a preponderance of the evidence that her dismissal was unwarranted. The Board reached this conclusion in reliance upon the following facts.

The agency's policies laid out the standards and expectation for proper case management. The Supplemental Job Description clearly recited the essential functions of the position of JPPO and they included adequate and thorough preparation of individual supervision plans, contemporaneous entries of activities into the tracking system, close monitoring of the juveniles under court and agency supervision and timely reports with complete documentation for oversight purposes. The position required field work with in-person contacts and site visits. The evidence in this case revealed that the appellant worked mostly from home and transacted business through text messages and electronic mail which is how some of her cases went awry. The appellant failed to perform the required trauma screening on several cases, her reports to the courts were minimal in content and sometimes untimely. She was late in entering information into the case management system.

An investigation of her files revealed notable deficiencies in contacts, site visits, failure to timely report serious incidents of missing juveniles and inadequate documentation of required information in violation of agency policies and the SJD. Because of the nature of the job, the appellant's substandard work performance placed some juveniles at great risk of harm. The agency had to remove the appellant from one case when a juvenile went missing for a weekend and was located by others at a motel with a dangerous adult. She received many warnings about her substandard performance through memoranda from Supervisor Henault, periodic meetings and a two-month mentoring plan – none of these efforts resulted in modifying the appellant's work habits and she took no ownership for any of the cited deficiencies during the course of a lengthy investigative interview. The appellant resisted change for

almost two years and especially resisted supervision and mentoring. The agency concluded that she failed to adequately protect the juveniles in her charge and, following an extended pattern of serious deviations from policies, the agency opted to bypass the progressive disciplinary process and proceed directly to dismissal. Following a thorough review of the record including the numerous cited incidents, the Board agreed with DCYF that the appellant failed to satisfactorily discharge the duties enumerated in the SJD and that she violated several of the agency's policies.

Based on the evidence of record, by unanimous vote, the Board dismisses the appeal and upholds the State's dismissal of the appellant.

  
Norman J. Patenaude, Esq.

  
Commissioner Gail Wilson

  
Commissioner Marilee Nihan

April 14, 2021